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                    UNITED STATES DISTRICT COURT
                    EASTERN DISTRICT OF NEW YORK


UNITED STATES OF AMERICA        *    Case No. 17-CR-00281(ERK)
                                *
                                *    Brooklyn, New York
          v.                    *    January 19, 2018
                                *
                                *
CARLOS RICHARD MARTINEZ,        *
                                *
          Defendant.            *
                                *
* * * * * * * * * * * * * * * *


          TRANSCRIPT OF CRIMINAL CAUSE FOR JURY TRIAL
            BEFORE THE HONORABLE EDWARD R. KORMAN
                 UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Government:             RICHARD P. DONOGHUE
                                UNITED STATES ATTORNEY

                           BY:  NADIA SHIHATA, ESQ.
                                NICOLE ARGENTIERI, ESQ.
                                Asst. United States Attorney
                                United States Attorney's Office
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For the Defendant:              ANTHONY L. RICCO, ESQ.
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1152

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Proceedings   1153

1   (Proceedings commenced at 11:58 a.m.)

2   THE CLERK: Counsel, the last jury note, the first one

3   this morning, has been marked Court Exhibit 28, requested

4   Government's Exhibits 208, 216, 213, 232, 240-A, as in Adam.

5   Counsel signed the letter and authorized me to submit

6   that to the jury. It's gone in.

7   (Court Exhibit No. 28 marked for identification.)

8   The Government's email from this morning has been

9   marked Court Exhibit 29, proposing a new verdict sheet, which

10   has been marked 29A.

11   Counsel, you've agreed that 29A can go into the jury

12   as is?

13   MS. ARGENTIERI: Yes.

14   (Court Exhibit Nos. 29 and 29A marked for identification.)

15   MR. RICCO: And I've -- yes, and I've discussed this

16   with Mr. Martinez. This is precisely what we were requesting

17   the judge to do last night.

18   THE CLERK: And you consent to this, Mr. Martinez.

19   MR. RICCO: And he consents to it.

20   THE DEFENDANT: Yes.

21   THE CLERK: Thank you very much, counsel.

22   MR. RICCO: Thank you.

23   (Recess from 12:01 p.m. until 12:12 p.m.)

24   THE CLERK: Judge, I went back into the jury room and

25   just advised the jurors there was typo-- took it back. They

Proceedings   1154

1   laughed and they said they hadn't looked at it yet.

2   THE COURT: We're talking about the verdict sheet?

3   THE CLERK: 29A, Judge.

4   THE COURT: First of all, it's one thing to

5   communicate with me with my email when it's evenings and

6   weekends. I'm here. And if you want to make an application,

7   don't do it by email.

8   There was some confusion between communication

9   between my law clerk and Paula. I actually wanted to hear what

10 Mr. Ricco's position was before I decided whether to send it

11 in.

12   It didn't necessarily mean if he objected I wouldn't

13 have sent it in. He's consented, but I'm still not sure I

14 think that's the appropriate way to deal with this.

15   I think that I indicated yesterday my reluctance to

16 disrupt the jury's deliberations by sending in a new verdict

17 sheet and I still feel the same way.

18   MS. ARGENTIERI: The concern the government has,

19 Judge, is that the jurors -- we've left it to them to write

20 something in and it's unclear what they have to write in.

21   And I'm not saying --

22   THE COURT: It's unclear what they have to write in?

23   MS. ARGENTIERI: I think it is unclear, Judge, and I

24 think that jurors -- and I spoke about this with a number of

25 people in my office last night, including the front office and

Proceedings   1155

1   David James, and they have raised inferences where having

2   something like this they thought could create a problem,

3   assuming the defendant is convicted and -- because they might

4   not choose exactly the same language, or exactly the right

5   phrase, or they might just write one word.

6   And they thought it would just be cleaner if the

7   court would like to have a special interrogatory to have the

8   language in the statute in there so they could just check it to

9   make it simpler.

10   We are not trying to over complicate anything any

11 more than I know you believe it already is. It just seemed

12 cleaner. Mr. Ricco did not object --

13   MR. RICCO: Well, let's leave Mr. Ricco out of the

14 argument.

15   MS. ARGENTIERI: I don't know why --

16   MR. RICCO: I'm just asking you to leave me out of

17 the argument.

18   MS. ARGENTIERI: So at the time I believed -- because

19 I had spoken to Mr. Ricco that -- and he said he was fine, that

20 he had no objection.

21   And so, you know -- and now the truth of it is that

22 the -- I can't think of the word --

23   MS. SHIHATA: (Indiscernible)

24   MS. ARGENTIERI: No. They -- their deliberations, we

25 have done in and taken out the verdict sheet that we're using

Proceedings   1156

1   and we've given them this one, so it seems to me that this

2   would just be a way to make --

3   THE COURT: We haven't taken out the verdict sheet

4   that they're using.

5   THE CLERK: When I mistakenly understood that the new

6   verdict sheet should go in, I took out the old one because they

7   had not written anything on it. It was a clean verdict sheet.

8   And I stated that for the record earlier with counsel.

9   MR. RICCO: And, Judge, my request was if there were

10   any writing on the sheet at all, any markings at all, that it

11   would stay and you would be notified. That's how that --

12   So, Judge, I guess the --

13   THE COURT: Do we have the transcript from yesterday?

14   THE CLERK: There was an email glitch and it hasn't

15   been received. I can get it.

16   (Pause.)

17   THE CLERK: I just emailed the transcription service

18   to see if they could email it to me right away.

19   THE COURT: And whose fault was that, by the way,

20   that we didn't get it?

21   THE CLERK: ESR was notified this morning that they

22   didn't get a copy and the transcription service said it must

23   have been a glitch with her email that it was sent out. I

24   didn't remember seeing mine and I asked counsel and they said

25   they hadn't seen it. So it must have been a problem on the

Proceedings   1157

1   sender's account.

2   THE COURT: Look. I think we made it pretty clear to

3   the jury what they should do. I don't want you to think that

4   I'm acting irrationally.   What troubles me about this verdict

5   sheet is it already indicates an additional multiplicity of

6   counts in an indictment that in my view was already

7   unnecessarily prolix.

8   And by putting this in, you know, it sort of

9   indicates -- there's a suggestion here that there's a

10   multiplicity of counts when we're really dealing with, in this

11   instance, one count -- any one count with respect to each. So

12   that's my basic view.

13   And the other half of it is I don't like disrupting a

14   jury's deliberations in mid stream. I'm not suggesting that if

15   we -- you know, if this hadn't arisen at the outset, I might

16   not have done this, but I have these two concerns right now.

17   MS. ARGENTIERI: Okay.

18   THE COURT: And I don't -- you know, the jury's been

19   deliberating -- I think I gave them the case at 4 o'clock --

20   today is Friday. On Wednesday.

21   MS. ARGENTIERI: Okay.

22   THE COURT: They deliberated all day yesterday. They

23   deliberated almost a -- well, not a half a day. A couple of

24   hours this morning and I just am reluctant to disrupt it with a

25   verdict sheet that, you know, suggests that there are even more

Proceedings   1158

1   counts in the indictment than there already are.

2   MS. ARGENTIERI: Okay, Judge.

3   THE CLERK: Do you want to hear the play back from

4   when you spoke to the jury yesterday?

5   THE COURT: Yes, we could hear the play back.

6   MS. ARGENTIERI: Judge, we weren't -- I don't know

7   that we -- we weren't saying that what you said was unclear.

8   We were just talking about documenting what they find.

9   And so I just want to save you the -- honestly, we

10 understand what you're saying and --

11   THE COURT: And there is a safety valve here.

12   MS. ARGENTIERI: Okay.

13   THE COURT: The safety valve is if it's unclear when

14 they deliver the verdict, they could send them back and ask for

15 clarity. That's the final safety valve here.

16   MS. ARGENTIERI: Okay.

17   THE COURT: But I think we made it clear. I thought I

18 made it clear. I mean, I know you reminded me to tell them

19 whichever one they picked had to be -- they had to be unanimous

20 and I did that.

21   MS. ARGENTIERI: Okay. I think we're good then,

22 Judge.

23   MR. RICCO: And Judge, I just wanted to make my views

24 on this clear.

25   I certainly -- my concerns with -- the court's is,

Proceedings   1159

1   with respect to the jury getting the impression that we're sort

2   of all over the place. So I'm concerned about that.

3   This was a suggestion that was made last night. The

4   government posed it for whatever reason. My concerns was if

5   there was any markings on the verdict form, it should -- you

6   know, stays and --

7   THE COURT: Well, unless we -- let me put it this

8   way. I don't know what the jury was doing. Ever since I

9   predicted that Hillary Clinton would be celebrating her first

10 anniversary as president of the United States, I've stopped

11 making predictions about anything.

12   So I don't know what they're doing, unless this jury

13 is hung. I don't know what verdict sheet -- was there only one

14 verdict sheet sent it?

15   THE CLERK: Right now they do not have any verdict

16 sheet.

17   THE COURT: I don't -- I don't know -- I don't know

18 what they're doing.

19   MR. RICCO: You know, Judge, this is --

20   THE COURT: It may -- and I already know too much

21 because of the way this has been done.

22   MR. RICCO: Right. And my sense --

23   THE COURT: More than I should know. I don't think

24 that anything terrible has happened. The bad thing about my

25 knowing what the jury is doing is if they're split a particular

Proceedings   1160

1   way and I –– that prevents me from giving an *Allen* charge.

2   MR. RICCO: But, Judge, in thinking this through, I

3   mean, I –– I sort of rely on the wisdom and experience of the

4   court in these matters. I know that I ––

5   THE COURT: (Indiscernible) wisdom. I had this one

6   case where –– I occasionally do things out of the box. There's

7   one case in which I told the government they could amend the

8   indictment in the middle of trial.

9   MR. RICCO: The court was called *United States vs.*

10   *Caldwell.*

11   THE COURT: Well, maybe it was that too, but it was

12   another case. It was a capital case. And it wasn't a

13   significant change ––

14   MR. RICCO: No, it wasn't ––

15   THE COURT: It wasn't a significant change, but the

16   government agreed that it was okay. They consulted with their

17   people and the Court of Appeals disagreed.

18   MS. ARGENTIERI: I don't know that we should read it

19   as anything that there's nothing on the verdict form as of yet.

20   THE COURT: Well, I don't know. I'm not –– I

21   qualified it by saying that I could be wrong. There could be

22   one juror who's keeping track of what's going on, or two jurors

23   keeping track of what's going on on a separate pad and they may

24   want to fill it in afterwards.

25   MS. ARGENTIERI: Right. And they're continuing to

Proceedings   1161

1   ask for evidence, which they asked for this morning already,

2   and they're asking for more evidence now, which we'll go back -

3   - so perhaps we should just send back the old verdict form when

4   we send back these exhibits and we can resolve it that way.

5   THE COURT: Okay.

6   MR. RICCO: Judge, I was okay with Your Honor's

7   instructions last night. I'm also -- was okay with the -- if we

8   would have had this form last night, I would have been fine

9   with it.

10   But I'm also very much interested in Your Honor's

11   perspective about how jurors do this one way or the other.

12   THE COURT: I don't -- the question is -- the real

13   problem is I don't know. I just don't like the idea of, you

14   know, sending in a new verdict sheet in the middle of -- after

15   a day and a half of deliberations and a verdict sheet that only

16   -- my view was that this should have never been a 20 count

17   indictment and this makes it a what -- it makes it appear as if

18   it's 25 counts.

19   MS. ARGENTIERI: Understood.

20   THE COURT: Okay.

21   MS. ARGENTIERI: Okay. Thank you, Judge.

22   THE COURT: Just we've just received another note,

23   which I've marked Court Exhibit 30, requesting Larihelys'

24   testimony, Lopez testimony, Rodriguez testimony.

25   Larihelys' will be marked as Court Exhibit 30A,

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                          Proceedings                           1162
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 1   Rodriguez as 30B and they already have Lopez.

 2   (Court Exhibit Nos. 30A and 30B marked for

 3   identification.)

 4   I'm going to direct them to the number of that court

 5   exhibit once I --

 6   THE COURT: Do you -- have you gone through these

 7   transcripts?

 8   THE CLERK: Yes, I have.

 9   THE COURT: They're correct?

10   THE CLERK: Yes, Judge.

11   THE COURT: Okay. So there's no objection to sending

12   them in.

13   (Pause.)

14   THE CLERK: It's on the record.

15   MS. ARGENTIERI: Right.

16   THE CLERK: So I've marked Lariheyls as 30A,

17   Rodriguez as 30B and with your permission I will advise them

18   that Lopez is 22A.

19   MS. ARGENTIERI: Perfect.

20   MR. RICCO: Yes, you have my permission.

21   MS. ARGENTIERI: All right. Thank you. Thank you,

22   both.

23   THE CLERK: Judge, which verdict sheet are they

24   getting back now?

25   THE COURT: The original.

The Verdict   1163

1   THE CLERK: The original. So I am resubmitting Court

2   Exhibit 12.

3   MS. ARGENTIERI: Perfect.

4   THE CLERK: Thank you.

5   MS. ARGENTIERI: Thank you, Paula. Thank you, Judge.

6   (Recess from 12:30 p.m. until 3:09 p.m.)

7   THE CLERK: Please be seated.

8   Judge, I have a note the jury's reached a verdict.

9   It's been marked Court Exhibit No. 31 and signed by all jurors.

10   (Court Exhibit No. 31 marked for identification.)

11   THE COURT: Okay. Have you seen it?

12   THE CLERK: I told counsel I'll make copies

13   afterwards, Judge.

14   (Jury enters)

15   THE VERDICT

16   THE CLERK: All rise.

17   Please be seated.

18   THE COURT: Okay. Juror no. 2, we have your note

19   that the jury has reached a verdict.

20   I'll go through it with you. I'll ask the question

21   and you'll give me the jury's answer.

22   On Count 1, deprivation of rights, how do you find

23   the defendant; guilty or not guilty?

24   THE JURY FOREPERSON: Guilty.

25   THE COURT: On Count 5, how do you find the defendant

The Verdict   1164

1   with respect to deprivation of rights; guilty or guilty?

2   THE JURY FOREPERSON: Guilty.

3   THE COURT: On Count 9, how do you find the defendant

4   with respect to deprivation of rights; guilty or not guilty?

5   THE JURY FOREPERSON: On Count 13, with respect to

6   deprivation of rights, how do you find the defendant; guilty or

7   not guilty?

8   THE JURY FOREPERSON: Guilty.

9   THE COURT: On Count 17, deprivation of rights, how

10 do you find the defendant; guilty or not guilty?

11   THE JURY FOREPERSON: Guilty.

12   THE COURT: On Count 2, aggravated sexual abuse, how

13 do you find the defendant; guilty or not guilty?

14   THE JURY FOREPERSON: Guilty.

15   THE COURT: On Count 6, aggravated sexual abuse, how

16 do you find the defendant; guilty or not guilty?

17   THE JURY FOREPERSON: Guilty.

18   THE COURT: On Count 10, aggravated sexual abuse, how

19 do you find the defendant; guilty or not guilty?

20   THE JURY FOREPERSON: Guilty.

21   THE COURT: On Count 14, aggravated sexual abuse, how

22 do you find he defendant; guilty or not guilty?

23   THE JURY FOREPERSON: On Count 18, aggravated sexual

24 abuse, how do you find the defendant, guilty or not guilty?

25   THE COURT: On Count 3, which is sexual abuse, how do

The Verdict   1165

1   you find the defendant; guilty or not guilty?

2   THE JURY FOREPERSON: Guilty.

3   THE COURT: And if you recall, that was one of the

4   counts where you were going to let me know which, fear or

5   threat, or both.

6   THE JURY FOREPERSON: Fear.

7   THE COURT: On Count 7 of the indictment, sexual

8   abuse, December 13th, 2015, how do find the defendant; guilty

9   or not guilty?

10   THE JURY FOREPERSON: Guilty.

11   THE COURT: And that's another one where you were

12 going to let me know whether it was fear or threats?

13   THE JURY FOREPERSON: Fear.

14   THE COURT: Count 11, sexual abuse, how do you find

15 the defendant; guilty or not guilty?

16   THE JURY FOREPERSON: Guilty.

17   THE COURT: And, again, fear or threats?

18   THE JURY FOREPERSON: Fear.

19   THE COURT: Count 15, how do you find the defendant

20 with respect to count -- with respect to sexual abuse; guilty

21 or not guilty?

22   THE JURY FOREPERSON: Guilty.

23   THE COURT: Of fear or threats?

24   THE JURY FOREPERSON: Fear.

25   THE COURT: Count 19, sexual abuse, how do you find

The Verdict   1166

1   the defendant; guilty or not guilty?

2   THE JURY FOREPERSON: Guilty.

3   THE COURT: Of fear or threats?

4   THE JURY FOREPERSON: Fear.

5   THE COURT: On Count 4 of the indictment, sexual

6   abuse of a ward, how do you find the defendant; guilty or not

7   guilty?

8   THE JURY FOREPERSON: Guilty.

9   THE COURT: On Count 8 of the indictment, sexual

10   abuse of a ward, how do find the defendant; guilty or not

11   guilty?

12   THE JURY FOREPERSON: Guilty.

13   THE COURT: On Count 12 of the indictment, sexual

14   abuse of a ward, how do you find the defendant; guilty or not

15   guilty?

16   THE JURY FOREPERSON: Guilty.

17   THE COURT: On Count 16 of the indictment, sexual

18   abuse of a ward, how do you find the defendant; guilty or not

19   guilty?

20   THE JURY FOREPERSON: Guilty.

21   THE COURT: And on Count 20 of the indictment, how do

22   you find the defendant -- Count 20, sexual abuse of a ward, how

23   do you find the defendant; guilty or not guilty?

24   THE JURY FOREPERSON: Guilty.

25   THE COURT: All right, ladies and gentlemen. You've

The Verdict   1167

1   heard your foreperson announce your verdict, finding the

2   defendant guilty of all counts of the indictment.

3   Juror no. 1, is that your verdict?

4   JUROR NO. 1: Yes.

5   THE COURT: Juror no. 2, is that your verdict?

6   JUROR NO. 2: Yes.

7   THE COURT: Juror no. 3, is that your verdict?

8   JUROR NO. 3: Yes.

9   THE COURT: Juror no. 4, is that your verdict?

10   JUROR NO. 4: Yes.

11   THE COURT: Juror no. 5, is that your verdict?

12   JUROR NO. 5: Yes.

13   THE COURT: Juror no. 6, is that your verdict?

14   JUROR NO. 6: Yes.

15   THE COURT: Juror no. 7, is that your verdict?

16   JUROR NO. 7: Yes.

17   THE COURT: Juror no. 8, is that your verdict?

18   JUROR NO. 8: Yes.

19   THE COURT: Juror no. 9, is that your verdict?

20   JUROR NO. 9: Yes, Your Honor.

21   THE COURT: Juror no. 10, is that your verdict?

22   JUROR NO. 10: Yes.

23   THE COURT: Juror no. 11, is that your verdict?

24   JUROR NO. 11: Yes, Your Honor.

25   THE COURT: Juror no. 12, is that your verdict?

1   JUROR NO. 12: Yes.

2   THE COURT: Is there any reason why the jury should

3   not be excused?

4   MR. RICCO: None.

5   MS. ARGENTIERI: No, Judge.

6   THE COURT: Okay. Ladies and gentlemen -- as soon as

7   I get the microphone -- I want to thank you for your -- for the

8   time and careful attention that you've paid to this case.

9   Almost everybody was listening carefully and taking notes.

10 It's unusual the number of jurors that were taking notes in

11 this case, and the time that you took to deliberate on this

12 verdict I think also reflects the time and careful attention

13 you gave to this case.

14   I know most people who are selected for jury or when

15 they're being voir dired for jury selection they sort of don't

16 want to serve on a jury and they give answers to try and get

17 off.

18   But I think you'll agree with me that service on a

19 jury is an interesting -- not only an interesting experience,

20 but gives you a picture into the operation of the criminal

21 justice process that you would not otherwise have.

22   So I thank you again and have a nice weekend.

23   THE CLERK: All rise.

24   (Jury exits.)

25   THE CLERK: You may be seated.

The Verdict   1169

1   MR. RICCO: Yes, Your Honor. I want to renew the Rule

2   29 motions I did propose of all evidence. I adopted the

3   arguments that were made at the time.

4   THE COURT: I forgive you the fact that you didn't

5   do it at the time, but I don't think it makes any difference

6   because there was no great difference between the evidence

7   after the government's case and after your case that would have

8   affected a decision on a Rule 29 motion.

9   I'll give you until the date of sentencing to make

10   any post-trial motions that normally have to be made within

11   seven days of the trial.
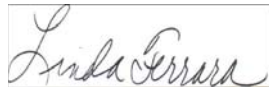
12   MR. RICCO: Thank you, Judge.

13   MS. SHIHATA: Thank you, Judge.

14   MR. RICCO: Thank you very much, Your Honor.

15   (Proceedings concluded at 3:18 p.m.)

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1170

1   I, LINDA FERRARA, Certified Electronic Transcriber,

2   certify that the foregoing is a correct transcript from the

3   official electronic sound recording of the proceedings in the

4   above-entitled matter.

5

6

7   _____   January 19, 2018

8   Linda Ferrara, CET

9

10

11   I, CHRISTINE FIORE, Certified Electronic Court Reporter

12   and Transcriber, certify that the foregoing is a correct

13   transcript from the official electronic sound recording of the

14   proceedings in the above-entitled matter.

15

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17   _____   January 19, 2018

18   Christine Fiore, CERT-410

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22

23

24

1171

1   INDEX

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Keyword Index

0 - consents

Keyword Index

Keyword Index

Keyword Index

record [2] 1156:8 1162:14
recording [2] 1170:3,13
reflects [1] 1168:12
reluctance [1] 1154:15
reluctant [1] 1157:24
rely [1] 1160:3
remember [1] 1156:24
reminded [1] 1158:18
renew [1] 1169:1
reporter [1] 1170:11
request [1] 1156:9
requested [1] 1153:3
requesting [2] 1153:16
 1161:23
research [1] 1152:4
resolve [1] 1161:4
respect [7] 1157:11 1159:
 1 1164:1,4,5 1165:20,20
resubmitting [1] 1163:1
ricco [21] 1153:15,19,22
 1155:12,13,13,16,19 1156:
 9 1158:23 1159:19,22 1160:
 2,9,14 1161:6 1162:20
 1168:4 1169:1,12,14
ricco's [1] 1154:10
rights [5] 1163:22 1164:1,4,
 6,9
rise [2] 1163:16 1168:23
rodriguez [3] 1161:24
 1162:1,17
room [1] 1153:24
rule [2] 1169:1,8

S

safety [3] 1158:11,13,15
same [2] 1154:17 1155:4
save [1] 1158:9
saying [4] 1154:21 1158:7,
 10 1160:21
seated [3] 1163:7,17 1168:
 25
see [1] 1156:18
seeing [1] 1156:24
seemed [1] 1155:11
seems [1] 1156:1
seen [2] 1156:25 1163:11
selected [1] 1168:14

selection [1] 1168:15
send [4] 1154:10 1158:14
 1161:3,4
sender's [1] 1157:1
sending [3] 1154:16 1161:
 14 1162:11
sense [1] 1159:22
sent [3] 1154:13 1156:23
 1159:14
sentencing [1] 1169:9
separate [1] 1160:23
serve [1] 1168:16
service [3] 1156:17,22
 1168:18
seven [1] 1169:11
sexual [15] 1164:12,15,18,
 21,23,25 1165:7,14,20,25
 1166:5,9,13,17,22
sheet [16] 1153:9 1154:2,
 17 1155:25 1156:3,6,7,10
 1157:5,25 1159:13,14,16
 1161:14,15 1162:23
shihata [2] 1155:23 1169:
 13
signed [2] 1153:5 1163:9
significant [2] 1160:13,15
simpler [1] 1155:9
since [1] 1159:8
soon [1] 1168:6
sort [4] 1157:8 1159:1 1160:
 3 1168:15
sound [2] 1170:3,13
special [1] 1155:7
split [1] 1159:25
spoke [2] 1154:24 1158:4
spoken [1] 1155:19
stated [1] 1156:8
states [2] 1159:10 1160:9
statute [1] 1155:8
stay [1] 1156:11
stays [1] 1159:6
still [2] 1154:13,17
stopped [1] 1159:10
stream [1] 1157:14
street [1] 1151:20
submit [1] 1153:5
suggesting [1] 1157:14

suggestion [2] 1157:9
 1159:3
suggests [1] 1157:25
suite [1] 1152:4

T

terrible [1] 1159:24
testimony [3] 1161:24,24,
 24
there's [5] 1157:9,9 1160:6,
 19 1162:11
thinking [1] 1160:2
threat [1] 1165:5
threats [4] 1165:12,17,23
 1166:3
today [1] 1157:20
took [3] 1153:25 1156:6
 1168:11
track [2] 1160:22,23
transcriber [2] 1170:1,12
transcript [3] 1156:13
 1170:2,13
transcription [2] 1156:17,
 22
transcripts [1] 1162:7
trial [2] 1160:8 1169:11
troubles [1] 1157:4
truth [1] 1155:21
try [1] 1168:16
trying [1] 1155:10
two [2] 1157:16 1160:22
typo [1] 1153:25

U

unanimous [1] 1158:19
unclear [5] 1154:20,22,23
 1158:7,13
understand [1] 1158:10
understood [2] 1156:5
 1161:19
united [2] 1159:10 1160:9
unless [2] 1159:7,12
unnecessarily [1] 1157:7
until [3] 1153:23 1163:6
 1169:9
unusual [1] 1168:10
using [2] 1155:25 1156:4

V

valve [3] 1158:11,13,15
verdict [37] 1153:9 1154:2,
 16 1155:25 1156:3,6,7
 1157:4,25 1158:14 1159:5,
 13,14,15 1160:19 1161:3,
 14,15 1162:23 1163:8,15,
 19 1167:1,3,5,7,9,11,13,15,
 17,19,21,23,25 1168:12
 1171:2
vesey [1] 1151:20
view [3] 1157:6,12 1161:16
views [1] 1158:23
voir [1] 1168:15
vs [1] 1160:9

W

wanted [2] 1154:9 1158:23
ward [5] 1166:6,10,14,18,
 22
way [9] 1154:14,17 1156:2,
 19 1159:8,21 1160:1 1161:
 4,11
wednesday [1] 1157:20
weekend [1] 1168:22
weekends [1] 1154:6
whatever [1] 1159:4
whether [2] 1154:10 1165:
 12
whichever [1] 1158:19
who's [1] 1160:22
will [2] 1161:25 1162:17
wisdom [2] 1160:3,5
within [1] 1169:10
word [2] 1155:5,22
write [4] 1154:19,20,22
 1155:5
writing [1] 1156:10
written [1] 1156:7

Y

yesterday [4] 1154:15
 1156:13 1157:22 1158:4